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RECENT CASES.

AGENCY—ILLEGAL CONTRACT—IMPLIED AUTHORITY.—*RICKARDS v. RICKARDS*, 56 ATL. 397 (MD.).—An agent appointed to sell a horse sold it in violation of the Sunday laws. The principal sued in replevin on the ground that the agent had no authority to sell illegally. *Held*, that such sale was within the scope of the agent's authority and the principal is bound.

It is well settled that authority to commit a criminal act will never be inferred. *Pearce v. Foote*, 113 Ill. 228; *Clark v. Metropolitan Bank*, 3 Duer (N. Y.) 241. In civil cases the principal's liability depends on whether the act is within the scope of the agent's authority. A railroad company is liable where the conductor illegally puts a passenger off the train. *B. & Y. Turnpike Co. v. Boone*, 45 Md. 344. And in England where a party, authorized to get information, gets it illegitimately his partner is liable, *Hamlyn v. Houston & Co.*, L. R. (1903) 1 K. B. 81. But an agent, employed to make a loan, has no implied authority to make it usurious. *Condit v. Baldwin*, 21 N. Y. 219. And in *Arnot v. Pitson, etc.*, R. Co., 5 Th. & C. (N. Y.) 143, it was decided that, where an act may be done legally, authority in the agent to do it illegally will not ordinarily be presumed. Generally, however, such acts as that of the agent in the principal case would very likely be held to be impliedly authorized.

APPEAL AND ERROR—CONSTITUTIONAL RIGHT TO REVIEW—ISSUES FIRST RAISED IN APPELLATE COURT.—*COOK v. AM. E. C. & SCHULTZ GUNPOWDER CO.*, 56 ATL. 114 (N. J.).—In an action for death of plaintiff's intestate charged to negligence of defendant while such intestate was in defendant's employ, verdict was rendered for plaintiff. On appeal, the defendant showed that the verdict was contrary to the evidence, but plaintiff sought to sustain the verdict on a contention that defendant had rendered the place of intestate's employment dangerous without intestate's knowledge. *Held*, that the verdict cannot be sustained on the theory that, in the absence of negligence of this character, the plaintiff was entitled to a verdict on some other ground not submitted to the jury's determination.

A plaintiff's verdict cannot be sustained on a theory of law antagonistic to that upon which the case was tried. To do so, upon a rule to show cause, would be to deprive defendant of his right to have the judgment of the court of last resort upon the soundness of that theory, as applied to the facts of the case. *DeRaimes v. DeRaimes*, 56 Atl. 170. When in a civil case no request is made, the mere omission to charge upon a particular point is not ground of error. *Fox v. Fox*, 96 Pa. St. 60; *Phila. & R. R. Co. v. Getz*, 113 Pa. St. 214. It is the constitutional right of every citizen to have his case reviewed, in one form or another, by a court of error. *Ringgold's Case*, 1 Bland 5 (Md.). This is impossible where a supreme court first settles an issue. But where both parties raise such issue on appeal, though neither raised it in lower court, such court may make it a basis of decision. *Summerson v. Hicks*, 142 Pa. St. 344.